IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8896 OF 2003

1. Shri Dilip Mahadeorao Tatooskar & ors] .. Petitioners

Versus

1. M/s. Sudarshan Industries & ors.] .. Respondents

Mr. Sandeep A. Bhagwat for the petitioners.

Mr. Avinash B. Avhad for the respondent No.1A & 1B.

CORAM: S.B. MHASE, J.

DATED: 27TH APRIL, 2007

P.C. :

. Heard.

2. The learned counsel for the petitioners submitted that the property bearing No.563, Guruwar Peth, Pune is the property belonging to the petitioners and, therefore, the injunction should not have been granted in respect of the said property. He initially tried to rely upon the "Will", which was executed by his father in the year 1997 and submitted that the Will has been mutated in the record and the rights on the property have been recorded in the name of the petitioners and the same was not challenged and,

therefore, this being a separate property of the petitioners, the injunction should not be granted in respect of this property. He also tried to contend that the property was a self-acquired property of the father and, therefore, the injunction should not have been granted.

3. Mr. Avhad, the learned counsel for the respondent No.1 submitted that it was a Partnership of the joint family members and the property which was standing in the name of the father was the joint family property wherein the office of the Partnership firm was located and he submitted that the dispute is between the members of the joint family and also in respect of the joint family Partnership. He submitted that the Will Deed upon which the petitioners are relying upon was executed during the pendency of the Suit and since the issue in respect of the ownership to the property is a subject matter of the suit, the further entries which were affected in view of the Will which was executed during the pendency of the Suit, were not challenged. He stated that the order passed by the Appellate Court is just and proper.

4. It is an admitted position that the property bearing No.563 of Guruwar Peth, Pune, is a subject

matter of the Suit and the Suit was filed during the lifetime of the father and, therefore, simplicitor the property has been mutated in the name of the petitioners, as a result of the Will, it will be prejudicial as against the original plaintiff. It is well settled that the final dispute in respect of the property will be decided in the Suit itself and, therefore, not challenging the mutation entries does not seal the case of the plaintiff.

5. So far as the nature of the property is concerned, the Court asked the counsel for the petitioners as to what was the material to demonstrate that the property in question was a self-acquired property of the father of the petitioner. Except pointing out that the property was standing in the name of the father of the petitioners and that it has been transferred in the name of the petitioners by a Will, no evidence has been produced on record to demonstrate that it was a self-acquired property of the father. The learned counsel for the petitioners, at this stage, interfered and submitted that the record has been produced in the trial Court. However, on perusal of both the judgments, this Court does not find any reference to the said record. Therefore, this Court called upon the learned counsel to satisfy on this

aspect. The learned counsel could not satisfy, except making a statement that there is a record available in the trial Court. Had such record been available, the certified copies or the copies of the said record would have been definitely annexed to the Petition by the petitioners. Non-production of the said record alongwith the Writ Petition leads to the only inference that there may be no such record available. Apart from that, it is a fact that the parties to the litigation are members of joint family and one of the property is admittedly a joint family property or a property of the Partnership firm. There is a presumption in favour of the jointness of the family, even though there is no presumption in favour of the jointness of the property. However, once it is established that the property was standing in the name of the father of the petitioners and the father, during his lifetime, has not contended that it is a self-acquired property, it will not be open for the petitioners to state that it was a self-acquired property of the father only because it has been bequeathed by a Will to the petitioners.

6. What this Court finds is that under such circumstances, in the interest of justice, it is necessary to preserve the disputed property till the adjudication of the civil rights of the parties. If the

injunction is vacated and if the petitioners are allowed to dispose of the property, third party interest will be created in the suit property and it will be difficult for the original plaintiff to recover the property and the balance of convenience will stand adversely affected to the original plaintiff. Suffice it to say that there is *prima facie* material to state that there is a joint family firm and the properties were standing in the name of the father of the petitioners and the respondents who happen to be real brothers and under these circumstances, it will be inappropriate to vacate the order of injunction which has been granted by the Appellate Court. Therefore, the fact that there is a *prima facie* case and balance of convenience is in favour of the plaintiff and, if the property is allowed to be disposed of, an irreparable loss would be caused and, therefore, this Court is not inclined to entertain this Writ Petition and it is hereby rejected.

Sd/-
[S.B. MHASE, J.]